



"To enrich lives through effective and caring service"



Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

December 07, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

30 December 7, 2010

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

Dear Supervisors:

**MARINA DEL REY CONVENTION AND VISITORS BUREAU AGREEMENT
FOR CONTINUED MARINA MARKETING AND PROMOTIONAL
SERVICES FOR MARINA DEL REY
(FOURTH SUPERVISORIAL DISTRICT) (3 VOTES)**

SUBJECT

To request your approval to enter into a five-year agreement with the Marina del Rey Convention and Visitors Bureau for continued development of marketing and promotional strategies for Marina del Rey as a travel and visitor destination.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and authorize the Mayor to execute the attached agreement with the Marina del Rey Convention and Visitors Bureau for a five-year term commencing on January 1, 2011 through December 31, 2015, resulting in an annual payment to the Bureau of \$227,400 for promotional services, as well as \$30,000 annually for seven-day-a-week staffing of the Marina del Rey Visitor Center and up to \$10,000 annually for joint promotional projects with the County.
2. Authorize the Director of the Department of Beaches and Harbors, if salary increases have been approved for County employees, to increase the Marina del Rey Convention and Visitors Bureau's annual promotional service payment by the lesser of (1) the average salary movement granted to County employees or (2) the increase in the Consumer Price Index for Los Angeles, Riverside and Orange Counties as determined by the U.S. Bureau of Labor Statistics.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Department of Beaches and Harbors (Department) is requesting your Board's approval of a five-year agreement (Agreement) with the Marina del Rey Convention and Visitors Bureau (MdR CVB). The MdR CVB is a non-profit mutual benefit corporation, formed to operate a convention and visitors bureau in cooperation with the private and public sectors, for the purpose of inviting, attracting and welcoming tourists, business travelers and visitors to Marina del Rey (Marina) as a destination of choice, through advertising, promotion, and other services. This Agreement would replace the existing agreement that commenced in February 2001 and, as extended, expires on December 31, 2010.

During the past ten years, the MdR CVB has become a well established entity in the Marina, working with the Marina business community during this difficult economic period and repositioning Marina del Rey's overall image to keep it competitive with the Westside hotel market. With respect to individual Marina del Rey hotels, the MdR CVB has worked with each to identify each of their markets and then has developed a tourism plan that promotes that facility to its targeted customer. The MdR CVB services will be especially needed to maintain the Marina's image as a fun and exciting place to live, work and play during this particular point in time as the Marina's second generation redevelopment increases. The MdR CVB has worked with the business community to bring fan tours of travel writers, treating them to the Marina experience of dining, entertainment and lodging. Additionally, in partnering with sister agencies to develop a comprehensive and unified tourism program for the local region, the MdR CVB has secured more exposure for the Marina at less cost. There is an increasing need to satisfy the demand for Marina information disseminated in response to visitor, trade and media inquiries, which the MdR CVB has filled through its website, Facebook, and Twitter applications.

With the redevelopment of the Marina, it is important to ensure the viability and stability of the MdR CVB. Accordingly, all Marina hotels have entered into five-year agreements with the MdR CVB, cancelable upon 365-day notice, which the County would similarly commit to through approval of the attached Agreement.

Implementation of Strategic Plan Goals

Approval of this Agreement will promote and further the County's Strategic Plan Goal #1, "Operational Effectiveness", Strategy 1, "Fiscal Sustainability", and Strategy 2, "Service Excellence and Organizational Effectiveness", by providing and distributing quality Marina information and highlighting visitor services, recreational activities and special events, all to increase the public's awareness of and visitorship to the Marina and, thereby, the Marina's fiscal viability. County Strategic Plan Goal #3, "Community and Municipal Services", Strategy #1, "Cultural and Recreational Enrichment", will also be enhanced by increasing accessibility to the Marina and its recreational opportunities through dissemination of this promotional material.

FISCAL IMPACT/FINANCING

Funding for the MdR CVB is included in the Department's 2010-11 Adopted Budget. The Department will pay the MdR CVB \$227,400 annually for promotional services, divided in three equal installments of \$75,800 to be paid on January 5, May 5, and September 5, 2011, respectively, and each agreement year thereafter.

As has occurred in prior years, the County will also expend an additional \$30,000 annually to compensate the MdR CVB for providing seven-day-a-week staffing services at the Marina del Rey Visitor and up to \$10,000 annually for joint projects with the MdR CVB that promote Marina del Rey, for a total potential annual payment of \$267,400.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The MdR CVB will continue to prepare and implement an annual tourism marketing plan to promote Marina del Rey as a destination of choice for visitors, tourists and business travelers, through advertising, promotion and other services. Prior to implementation, the MdR CVB will meet with the Department's Director to discuss the programs and secure approval of the plan.

The MdR CVB shall not use the County's name, logo or other intellectual property or depict County property without the Director's approval.

The creation of the MdR CVB almost ten years ago has provided the Marina with an important promotional tool in bringing business travel, tourists and visitors into Marina del Rey. There are many cities in Los Angeles County that compete aggressively to market their destinations to business travelers, tourists and visitors, and, in this competitive environment, the Marina has held onto its market share during the economic downturn.

During its existence, the MdR CVB has developed an infrastructure for responding to the needs of the travel industry, local government and Marina businesses. This infrastructure includes the MdR CVB's tourist-friendly website, and now Facebook and Twitter pages, dedicated to promoting Marina del Rey; familiarization tours; targeted information packets for travel writers; new brochures/literature; regular meetings with local government officials on Marina development; cooperative business promotions among Marina businesses; and a system for bidding on group/convention business for the hotels and restaurants.

County Counsel has approved the attached Agreement as to form. On November 8, 2010, the Small Craft Harbor Commission unanimously recommended its approval by your Board.

CONTRACTING PROCESS

In May 2000, your Board approved an action plan and a timeline for the formation of the MdR CVB and created an Executive Formation Committee to develop an implementation plan setting forth the steps and necessary documents to form the MdR CVB. Concurrent with your Board's approval in October 2000 of the implementation plan developed, County Counsel was authorized to assist the Executive Formation Committee in filing the MdR CVB's articles of incorporation with the California Secretary of State. The County has contracted with the MdR CVB for promotional services since December 2000.

All Marina hotels/motels will sign separate and identical five-year agreements with the MdR CVB to continue funding the MdR CVB through a voluntary 1% self-assessment on rates charged for room accommodations during the same time period covered by this Agreement, which covers calendar years 2011 through 2015. Each payment by the County to the MdR CVB shall be contingent upon full participation in and funding of the MdR CVB by every hotel/motel in Marina del Rey through this surcharge. Thus, the County's own Agreement with the MdR CVB in those years will continue to be augmented by 100% participation by all Marina hotels/motels.

In compliance with the County's Cost of Living Adjustment policy, the annual payment to the MdR CVB for promotional services may increase at the sole discretion of the Director of the Department of Beaches and Harbors by the lesser of (1) the average salary movement granted to County employees during the term of the Agreement or (2) the increase in the Consumer Price Index for Los Angeles, Riverside and Orange Counties as determined by the U.S. Bureau of Labor Statistics, if salary increases have been approved for County employees.

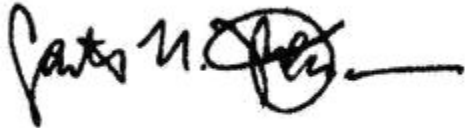
IMPACT ON CURRENT SERVICES (OR PROJECTS)

The MdR CVB has managed the development and dissemination of professional Marina del Rey visitor information building awareness of Marina del Rey. This exposure of the Marina allows the area to compete in the travel marketplace, particularly important as the Marina proceeds with its second-generation redevelopment plans.

CONCLUSION

Authorize the Executive Officer of the Board to send two approved copies of the executed Agreement to the Department of Beaches and Harbors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Santos H. Kreimann", followed by a horizontal line.

SANTOS H. KREIMANN
Director

SHK:ks

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors

AGREEMENT NO. 77445
BY AND BETWEEN THE COUNTY OF LOS ANGELES
AND THE MARINA DEL REY CONVENTION AND
VISITORS BUREAU, INC.

This Agreement is entered into this 7th day of December 2010, by and between the COUNTY OF LOS ANGELES ("County"), a political subdivision of the State of California, and the MARINA DEL REY CONVENTION AND VISITORS BUREAU, INC. ("MdR CVB"), a California non-profit corporation.

RECITALS

- A. The MdR CVB, a non-profit mutual benefit corporation, was formed to operate a convention and visitors bureau in cooperation with the private and public sectors, for the purpose of inviting, attracting and welcoming tourists, business travelers and visitors to Marina del Rey as a destination of choice, through advertising and promotion, and other services.
- B. Pursuant to Government Code Section 26100, the County may appropriate funds for the advertising, exploiting, and making known the resources of the County, in cooperation with or jointly by agreement with other agencies, associations, or corporations.
- C. The County, as the owner of Marina del Rey, has, in the past, contracted with the private sector for the creation and implementation of an advertising/promotional campaign for Marina del Rey to promote Marina del Rey as a destination of choice for tourists, business travelers and visitors.
- D. The County has contracted with the MdR CVB since 2001 for these services and desires that the MdR CVB continue to provide such services as an integral part of its marketing campaign for Marina del Rey, for the mutual benefit of the County, the members of the MdR CVB, and all those living and doing business in Marina del Rey.
- E. The MdR CVB is willing to undertake such services as are hereinafter set forth on behalf of the County as an integral part of its marketing campaign and other activities promoting Marina del Rey.

AGREEMENT

NOW THEREFORE, in consideration of these premises, it is hereby agreed by and between the parties as follows:

I. APPLICABLE DOCUMENTS

- A. Attachments A through H, as set forth below, are attached hereto and incorporated by reference, and form a part of this Agreement:

Attachment A	EEO Certification
Attachment B	Safely Surrendered Baby Law Fact Sheet
Attachment C	Jury Service
Attachment D	Certification of Compliance with County's Defaulted Property Tax Reduction Program
Attachment E	Certification of No Conflict of Interest
Attachment F	Attestation of Willingness to Consider GAIN/GROW Participants
Attachment G	Familiarity with the County Lobbyist Ordinance Certification

- B. This Agreement and the Attachments hereto constitute the complete and exclusive statement of understanding between the parties, which supersedes all previous agreements, written or oral, and all other communications between the parties relating to the subject matter of this Agreement.

II. TERM OF AGREEMENT

Term. The term of this Agreement shall be for a period of five years commencing on the effective date, which shall be January 1, 2011, unless otherwise sooner terminated in accordance with the provisions set forth herein. If other contributing members of the MdR CVB do not similarly commit to a five-year term, the County may cancel this Agreement upon 365-days' written notice. Notwithstanding the stated term of this Agreement, specified obligations set forth herein shall survive its expiration or termination.

III. MAXIMUM AMOUNT AND MDR CVB PAYMENT

- A. Monetary Payments. In consideration of the services enumerated in Section IV, below, the County shall make the following payments to the MdR CVB:
- i. \$227,400 annually, divided in three equal installments of \$75,800 to be paid no later than January 5, May 5, and September 5, 2011, respectively, and each Agreement year thereafter;
 - ii. \$30,000 annually for the promotional services rendered by the MdR CVB at the Marina del Rey Visitors Center, as discussed in IV.B.iii, below, which will be invoiced by the MdR CVB to the County;

- iii. An amount not to exceed \$10,000 annually for joint promotional projects with the County, as discussed in IV.B.iv, below, which will be invoiced by the MdR CVB to the County for the County's portion.
- iv. A late fee will be paid by the County on any payment that is more than ten calendar days late, which will be equal to 6% of the installment due, plus an interest fee computed at an annual rate equal to the Prime Rate plus 3%. The interest fee is computed from the date when the payment was due and payable and is compounded monthly, until paid;
- v. Each disbursement of such payments to the MdR CVB shall be contingent upon its compliance with the terms and conditions of this Agreement, as determined by the Director of the Los Angeles County Department of Beaches and Harbors ("Director") in his/her sole discretion;
- vi. Each disbursement of such payments to the MdR CVB shall be contingent upon full participation in, and funding of, the MdR CVB by every hotel/motel in Marina del Rey through a surcharge of no less than 1% against fees charged for the occupancy of hotel and motel sleeping accommodations; and
- vii. All such payments to the MdR CVB shall be expended by the MdR CVB for the activities enumerated in this Agreement.

B. Annual Increase. The annual payment to the MdR CVB may increase at the sole discretion of the Director by the lesser of (1) the average salary movement granted to County employees during the term of the Agreement, or (2) the increase in the Consumer Price Index for Los Angeles, Riverside and Orange Counties as determined by the U.S. Bureau of Labor Statistics. In the event that fiscal circumstances have prevented the Board from approving any increase in employee salaries, no increase in the annual payment to the MdR CVB shall be granted.

C. No Payment for Services Provided Following Expiration/Termination of Agreement. The MdR CVB shall have no claim against the County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by the MdR CVB after the expiration or other termination of this Agreement. Should the MdR CVB receive any such payment, it shall immediately notify the County and shall immediately repay all such funds to the County. Payment by the County for services rendered after expiration/termination of this Agreement shall not constitute a waiver of the County's right to recover such payment from the MdR CVB. This provision shall survive the expiration or other termination of this Agreement.

IV. STATEMENT OF WORK/DELIVERABLES/WORK PRODUCT

Services. The MdR CVB hereby agrees to provide the following services to the County during the term of this Agreement:

A. Marketing Plan.

For each year this Agreement is in effect, the MdR CVB shall prepare or cause to be prepared and implement a tourism marketing plan to promote Marina del Rey as a destination of choice for visitors, tourists and business travelers, through advertising, promotion and other services (the "Marketing Plan"). The Marketing Plan shall include, but not be limited, to the following:

- i. An evaluation of the MdR CVB's budget, activities, and operations for the previous year (if applicable);
- ii. A review and analysis of tourism trends, conditions and opportunities within Marina del Rey and Southern California;
- iii. Marketing strategies, objectives, targets, and tactics;
- iv. Target audiences for tourism marketing expenditures;
- v. Specific, planned activities and services for the coming year; and
- vi. Line-item budget for the coming year.

The first Marketing Plan shall be prepared and submitted for review and approval to the Director no later than January 15, 2011, unless the Director and the MdR CVB mutually agree otherwise. Subsequent Marketing Plans shall be prepared and submitted no later than November 15th of the year prior to its intended implementation. The Marketing Plan shall not be implemented with any County funding by the MdR CVB until it has been approved by the Director in writing. The Director shall review and approve the Marketing Plan for consistency with Countywide policies and procedures, and such approval shall not be unreasonably withheld.

The Marketing Plan may be revised or amended from time to time during the term of the Agreement. Any material changes to the Marketing Plan shall be submitted for review and approval to the Director.

Before proceeding with the implementation of any component of the Marketing Plan requiring the creation of any written or visual product intended to be disseminated to the public, the MdR CVB shall meet and confer with the Director or his/her designee. The MdR CVB shall not use the County's name, logo or other intellectual property or depict County property without the express written consent of the Director or his/her designee.

B. Convention and Visitors Bureau.

- i. The MdR CVB shall operate a bureau for the dissemination of information promoting Marina del Rey to tourists, business travelers, visitors, travel and tourism service providers, and other organizations and individuals interested in Marina del Rey, including:
 - (a) Building awareness of Marina del Rey as an attractive and unique travel destination, emphasizing overnight stays;
 - (b) Expanding Marina del Rey's ability to compete for groups by advising and supporting group marketers;
 - (c) Acting as the central source of information to inform, educate and advise visitors, the travel trade and the travel media about the visitor experience in Marina del Rey;
 - (d) Promoting, inviting and encouraging trade and business meetings, conferences, and special events in Marina del Rey;
 - (e) Interacting with the media to promote Marina del Rey, including preparing articles and news stories, compiling data, developing printed material and brochures descriptive of the Marina's resources, and collecting news items, photos, and other print material; and
 - (f) Maintaining a website and participating in other social media to disseminate information promoting Marina del Rey.
- ii. The MdR CVB shall promptly answer all correspondence and inquiries relative to business travel, trade and tourism in Marina del Rey.
- iii. The MdR CVB shall provide seven-day-a-week promotional services at the Marina del Rey Visitors Center from 9:00 a.m. to 5:00 p.m. Monday through Friday and 10:00 a.m. to 4:00 p.m. Saturday and Sunday. This operating schedule may be modified with the prior written approval of the Director.
- iv. The MdR CVB may engage in joint promotional projects with the County that bring tourists, business travelers and/or visitors into Marina del Rey.

C. **Promotions.** The MdR CVB shall favorably promote, invite and encourage trade and business meetings, conferences, and celebrations in Marina del Rey to bring additional revenue to the Marina and to businesses within the Marina.

D. **Media Interactions.** The MdR CVB shall interact with the media in order to promote Marina del Rey as a destination of choice for visitors, tourists and business travelers. The MdR CVB shall prepare articles and news stories,

compile data, and gather and assemble news items, photographs, printed material and brochures descriptive of Marina del Rey's resources for use in such interactions.

- E. Marina Facilities. The MdR CVB shall cooperate with the County and private businesses to utilize both public and private facilities within the Marina to the fullest extent possible for the purpose of promoting Marina del Rey as a destination of choice for visitors, tourists and business travelers. The MdR CVB shall also review, from time to time, the facilities and services, both public and private, in Marina del Rey necessary to support convention and visitors' activities and advise the County and the business community of problems and needed improvements for support of such activities.
- F. Year-End Report. The MdR CVB shall prepare a year-end report within 45 days after each year's end for review by the Director. Each year-end report shall detail the activities and disbursements of the MdR CVB during the year and the current status of ongoing projects and activities planned for the remainder of the Agreement term.
- G. Staff. The MdR CVB shall employ competent personnel to carry on the promotional activities enumerated herein.

V. FURTHER TERMS AND CONDITIONS

- 1. Amendment of Agreement. Only nonmaterial Amendments to this Agreement which do not materially change the scope of the Agreement, increase the County's financial responsibility or impose additional liability on the County may be executed without approval of the Los Angeles County Board of Supervisors and all must be in writing and shall not be effective unless and until executed by the MdR CVB and, in the case of the County, until executed by the Director.
- 2. Assurance of Compliance With Civil Rights. The MdR CVB hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Agreement or under any project, program, or activity supported by this Agreement. The MdR CVB shall comply with Attachment B - EEO Certification.
- 3. Assignment and Delegation. The MdR CVB may not assign its rights or delegate its duties under this Agreement, whether in whole or in part, without the prior written consent of the County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. County consent shall require written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by the County to any

approved delegate or assignee on any claim under this Agreement shall be deductible, at County's sole discretion, against the claims that the MdR CVB may have against County.

4. Authorization Warranty. The MdR CVB represents and warrants that the signatory to this Agreement is fully authorized to obligate the MdR CVB hereunder and that all requirements of the MdR CVB have been fulfilled to provide such actual authority.
5. Compliance With Applicable Law.
 - i. In the performance of this Agreement, the MdR CVB shall comply with all applicable Federal, State and local laws, rules, regulations, ordinances, directives, guidelines, policies and procedures, and all provisions required thereby to be included in this Agreement are hereby incorporated herein by reference.
 - ii. The MdR CVB shall indemnify, defend, and hold harmless County, its officers, employees, and agents, from and against any and all claims, demands, damages, liabilities, losses, costs, and expenses, including, without limitation, defense costs and legal, accounting and other expert, consulting or professional fees, arising from, connected with, or related to any failure by the MdR CVB, its officers, employees, agents, or subcontractors, to comply with any such laws, rules, regulations, ordinances, directives, guidelines, policies, or procedures, as determined by County in its sole judgment. Any legal defense pursuant to the MdR CVB's indemnification obligations under this section shall be conducted by the MdR CVB and performed by counsel selected by the MdR CVB and approved by County. Notwithstanding the preceding sentence, County shall have the right to participate in any such defense at its sole cost and expense, except that in the event the MdR CVB fails to provide County with a full and adequate defense, as determined by County in its sole judgment, County shall be entitled to retain its own counsel, including, without limitation, County Counsel, and reimbursement from the MdR CVB for all such costs and expenses incurred by County in doing so. The MdR CVB shall not have the right to enter into any settlement, agree to any injunction or other equitable relief, or make any admission, in each case, on behalf of County without County's prior written approval.
6. Compliance With County's Jury Service Program. This Agreement is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code, a copy of which is attached as Attachment D and incorporated by reference into and made a part of this Agreement.

Written Employee Jury Service Policy.

- i. Unless the MdR CVB has demonstrated to the County's satisfaction either that it is not a "Contractor" as defined under the Jury Service Program (Section 2.203.020 of the County Code) or that it qualifies for an exception to the Jury Service Program (Section 2.203.070 of the County Code), the MdR CVB shall have and adhere to a written policy that provides that its employees shall receive from the MdR CVB, on an annual basis, no less than five days of regular pay for actual jury service. The policy may provide that employees deposit any fees received for such jury service with the MdR CVB or that the MdR CVB deduct from the employees' regular pay the fees received for jury service.
- ii. For purposes of this sub-paragraph, "Contractor" means a person, partnership, corporation or other entity which has an agreement with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full-time employee of the MdR CVB. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County; or 2) the MdR CVB has a longstanding practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If the MdR CVB uses any subcontractor to perform services for the County under the Agreement, the subcontractor shall also be subject to the provisions of this sub-paragraph. The provisions of this sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.
- iii. If the MdR CVB is not required to comply with the Jury Service Program when the Agreement commences, the MdR CVB shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and the MdR CVB shall immediately notify the County if the MdR CVB at any time either comes within the Jury Service Program's definition of "Contractor" or if the MdR CVB no longer qualifies for an exception to the Jury Service Program. In either event, the MdR CVB shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Agreement and at its sole discretion, that the MdR CVB demonstrate to the County's satisfaction that the MdR CVB either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that the MdR CVB continues to qualify for an exception to the Program.
- iv. The MdR CVB's violation of this sub-paragraph of the Agreement may constitute a material breach of the Agreement. In the event of such

material breach, County may, in its sole discretion, terminate the Agreement and/or bar the MdR CVB from the award of future County contracts for a period of time consistent with the seriousness of the breach.

7. Conflict of Interest. No County employee whose position with the County enables such employee to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the MdR CVB or have any other direct or indirect financial interest in this Agreement. No officer or employee of the MdR CVB who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

The MdR CVB shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The MdR CVB warrants that it is not now aware of any facts that create a conflict of interest. If the MdR CVB hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this sub-paragraph shall be a material breach of this Agreement.

8. Consideration of Hiring County Employees Targeted for Layoff/or Re-Employment List. Should the MdR CVB require additional or replacement personnel after the effective date of this Agreement to perform the services set forth herein, the MdR CVB shall give first consideration for such employment openings to qualified permanent County employees who are targeted for layoff or qualified former County employees who are on a re-employment list during the life of this Agreement.
9. Consideration of Hiring GAIN/GROW Program Participants. Should the MdR CVB require additional or replacement personnel after the effective date of this Agreement, the MdR CVB shall give consideration for any such employment openings to participants in the County's Department of Public Social Services' Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the MdR CVB's minimum qualifications for the open position. For this purpose, consideration shall mean that MdR CVB will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the MdR CVB. In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

10. Responsibility and Debarment.

- i. Responsible Contractor. A responsible contractor is a contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Agreement. It is the County's policy to conduct business only with responsible contractors.
- ii. Chapter 2.202 of the County Code. The MdR CVB is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the MdR CVB on this or other agreements which indicates that the MdR CVB is not responsible, the County may, in addition to other remedies provided in the Agreement, debar the MdR CVB from bidding or proposing on, or being awarded, and/or performing work on County agreements for a specified period of time, which generally will not exceed five years but may exceed five years or be permanent if warranted by the circumstances, and terminate any or all existing agreements the MdR CVB may have with the County.
- iii. Non-responsible Contractor. The County may debar a contractor if the Board of Supervisors finds, in its discretion, that the contractor has done any of the following: (1) violated a term of an agreement with the County or a nonprofit corporation created by the County; (2) committed an act or omission which negatively reflects on the contractor's quality, fitness or capacity to perform an agreement with the County, any other public entity, or a nonprofit corporation created by the County, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the County or any other public entity.
- iv. Contractor Hearing Board. If there is evidence that the contractor may be subject to debarment, the Department will notify the contractor in writing of the evidence which is the basis for the proposed debarment and will advise the contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The contractor and/or the contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a tentative proposed decision, which shall contain a recommendation regarding whether the contractor should be debarred, and, if so, the appropriate length of time of the debarment. The contractor and the Department shall be provided an opportunity to object to the tentative proposed decision prior to its presentation to the Board of Supervisors.

After consideration of any objections, or if no objections are submitted, a record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

If a contractor has been debarred for a period longer than five years, that contractor may, after the debarment has been in effect for at least five years, submit a written request for review of the debarment determination to reduce the period of debarment or terminate the debarment. The County may, in its discretion, reduce the period of debarment or terminate the debarment if it finds that the contractor has adequately demonstrated one or more of the following: (1) elimination of the grounds for which the debarment was imposed; (2) a bona fide change in ownership or management; (3) material evidence discovered after debarment was imposed; or (4) any other reason that is in the best interests of the County.

The Contractor Hearing Board will consider a request for review of a debarment determination only where (1) the contractor has been debarred for a period longer than five years; (2) the debarment has been in effect for at least five years; and (3) the request is in writing, states one or more of the grounds for reduction of the debarment period or termination of the debarment, and includes supporting documentation. Upon receiving an appropriate request, the Contractor Hearing Board will provide notice of the hearing on the request. At the hearing, the Contractor Hearing Board shall conduct a hearing where evidence on the proposed reduction of debarment period or termination of debarment is presented. This hearing shall be conducted and the request for review decided by the Contractor Hearing Board pursuant to the same procedures as for a debarment hearing.

The Contractor Hearing Board's proposed decision shall contain a recommendation on the request to reduce the period of debarment or terminate the debarment. The Contractor Hearing Board shall present its proposed decision and recommendation to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

v. Subcontractors of MdR CVB. These terms shall also apply to subcontractors of the MdR CVB.

11. Contractor's Acknowledgment of County's Commitment to Safely Surrendered Baby Law. The MdR CVB acknowledges that the County places a high priority on the implementation of the Safely Surrendered Baby Law. The MdR CVB understands that it is the County's policy to encourage all County contractors to voluntarily post the County's "Safely Surrendered Baby Law" poster in a prominent position at the contractor's place of business. The MdR

CVB will also encourage its subcontractors, if any, to post this poster in a prominent position in the subcontractor's place of business. Information on how to receive the poster can be found on the Internet at www.babysafela.org.

12. Contractor's Personnel. The MdR CVB shall provide qualified personnel to perform work and provide work products (deliverables) as indicated in this Agreement. MdR CVB will ensure that its staff possesses the required professional licenses and certificates, if any, required by the State of California.
13. Contractor's Warranty of Adherence to County's Child Support Compliance Program.
 - i. The MdR CVB acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through agreement are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.
 - ii. As required by the County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting the MdR CVB's duty under this Agreement to comply with all applicable provisions of law, the MdR CVB warrants that it is now in compliance and shall during the term of this Agreement maintain in compliance with employment and wage reporting requirements, as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child, Family or Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).
14. Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program. The MdR CVB acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through agreement are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers. Unless the MdR CVB qualifies for an exemption or exclusion, the MdR CVB warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this Agreement will maintain compliance, with Los Angeles County Code Chapter 2.206.
15. County's Quality Assurance Plan. The County or its agent will evaluate the MdR CVB's performance under the Agreement on a periodic basis. Such evaluation will include assessing the MdR CVB's compliance with all terms in the Agreement and performance standards identified in the Statement of Work. The MdR CVB's deficiencies that the County determines are severe or continuing and that may jeopardize performance of the Agreement will be

reported to the County's Board of Supervisors. The report will include improvement/corrective action measures taken by the County and the MdR CVB. If improvement does not occur consistent with the corrective action measures, the County may terminate the Agreement in whole or in part or impose other penalties as specified in the Agreement.

16. County's Right to Renegotiate Agreement. The County retains the right to renegotiate the terms, conditions, and fees during the period of this Agreement if such renegotiation is necessitated by budget shortfalls and reductions.

17. Covenant Against Contingent Fees.

i. The MdR CVB warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon any agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the MdR CVB for the purpose of securing business.

ii. For breach of this warranty, the County shall have the right to terminate this Agreement and, at its sole discretion, deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

18. Dissolution Audit. If, at any time during the term of this Agreement, the MdR CVB is dissolved, authorized representatives of the County shall be entitled to conduct an audit of the MdR CVB to determine what portion of the compensation paid by the County to date has been expended by the MdR CVB in furtherance of this Agreement. If such audit finds that the full amount of the compensation paid by the County has not been expended, the MdR CVB shall repay forthwith to the County said unexpended amount.

19. Employment Eligibility Verification.

i. The MdR CVB warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The MdR CVB shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations, including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), as they currently exist and as they may be hereafter amended. The MdR CVB shall retain all such documentation for all covered employees for the period prescribed by law.

- ii. The MdR CVB shall indemnify, defend, and hold harmless the County, its agents, officers, and employees, from employer sanctions and any other liability that may be assessed against the MdR CVB or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Agreement.

20. Governing Law, Jurisdiction and Venue. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The MdR CVB agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

21. Independent Contractor Status.

- i. This Agreement is by and between the County and the MdR CVB and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the MdR CVB. The MdR CVB is an independent contractor and the officers, employees and agents of one party shall not be, or be construed to be, the officers, employees or agents of the other party for any purpose whatsoever. The MdR CVB's employees shall not be entitled to any rights, benefits or privileges of County employees. Neither party shall be responsible for any obligations of the other, except as herein specifically provided.
- ii. The MdR CVB shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Agreement all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the MdR CVB.
- iii. The MdR CVB understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of Workers' Compensation liability, solely employees of the MdR CVB and not employees of the County. The MdR CVB shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of the MdR CVB pursuant to this Agreement.

22. Indemnification. The MdR CVB shall indemnify, defend and hold harmless County, its Special Districts, elected and appointed officers, employees and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and

expert witness fees), arising from or connected with the MdR CVB's acts and/or omissions arising from and/or related to this Agreement.

23. General Provisions for All Insurance Coverage. Without limiting the MdR CVB's indemnification of the County, the MdR CVB shall provide and maintain at its own expense during the term of this Agreement the following program(s) of insurance covering the MdR CVB's activities. Such insurance shall be provided by insurer(s) satisfactory to the County's Risk Manager, and evidence of such programs satisfactory to the County shall be delivered to the Director on or before the effective date of this Agreement. Such evidence shall specifically identify this Agreement and shall contain express conditions that the County is to be given written notice at least 30 days in advance of any material modification or termination of any program of insurance. Such insurance shall be primary to and not contributing with any other insurance maintained by the County and shall name the County of Los Angeles and its elected officials, officers, employees and agents as additional insureds.

- i. Evidence of Coverage and Notice to County. Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) have been given insured status under the MdR CVB's General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Agreement .

Renewal Certificates shall be provided to County not less than 10 days prior to MdR CVB's policy expiration dates. The County reserves the right to obtain complete, certified copies of any required MdR CVB and/or subcontractor insurance policies at any time.

Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, and the amounts of any policy deductibles or self-insured retentions exceeding fifty thousand (\$50,000.00) dollars, as well as list any County required endorsement forms.

Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the MdR CVB, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

The MdR CVB also shall promptly report to County any injury or property damage accident or incident, including any injury to an MdR CVB

employee, occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to the MdR CVB. The MdR CVB also shall promptly notify County of any third party claim or suit filed against the MdR CVB or any of its subcontractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against the MdR CVB and/or County.

- ii. Additional Insured Status and Scope of Coverage. The County of Los Angeles and its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under the MdR CVB's General Liability policy with respect to liability arising out of the MdR CVB's ongoing and completed operations performed on behalf of the County. County and its Agents' additional insured status shall apply with respect to liability and defense of suits arising out of the MdR CVB's acts or omissions, whether such liability is attributable to the MdR CVB or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.
- iii. Cancellation of Insurance. Except in the case of cancellation for non-payment of premium, the MdR CVB's insurance policies shall provide, and Certificates shall specify, that County shall receive not less than 30 days' advance written notice by mail of any cancellation of the Required Insurance. Ten days' prior notice may be given to County in event of cancellation for non-payment of premium.
- iv. Failure to Maintain Insurance. The MdR CVB's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Agreement, upon which County immediately may withhold payments due to the MdR CVB and/or suspend or terminate this Agreement. County, at its sole discretion, may obtain damages from MdR CVB resulting from said breach.
- v. Insurer Financial Ratings. Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.
- vi. Contractor's Insurance Shall Be Primary. The MdR CVB's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to the MdR CVB. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any MdR CVB coverage.

- vii. Waivers of Subrogation. To the fullest extent permitted by law, the MdR CVB hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. The MdR CVB shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.
- viii. Subcontractor Insurance Coverage Requirements. The MdR CVB shall include all subcontractors as insureds under the MdR CVB's own policies, or shall provide County with each subcontractor's separate evidence of insurance coverage. The MdR CVB shall be responsible for verifying each subcontractor complies with the Required Insurance provisions herein and shall require that each subcontractor name the County and the MdR CVB as additional insureds on the subcontractor's General Liability policy. The MdR CVB shall obtain County's prior review and approval of any subcontractor request for modification of the Required Insurance.
- ix. Deductibles and Self-Insured Retentions (SIRs). The MdR CVB's policies shall not obligate the County to pay any portion of any MdR CVB deductible or SIR. The County retains the right to require the MdR CVB to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing the MdR CVB's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.
- x. Claims Made Coverage. If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. The MdR CVB understands and agrees it shall maintain such coverage for a period of not less than three years following Agreement expiration, termination or cancellation.
- xi. Application of Excess Liability Coverage. The MdR CVB may use a combination of primary and excess insurance policies that provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.
- xii. Separation of Insureds. All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.
- xiii. Alternative Risk Financing Programs. The County reserves the right to review, and then approve, the MdR CVB's use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be designated as an Additional Covered Party under any approved program.

- xiv. County Review and Approval of Insurance Requirements. The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures.

24. Insurance Coverage.

- i. Commercial Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming the County and its agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

- ii. Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall be secured at such time as the MdR CVB uses autos pursuant to this Agreement and shall cover liability arising out of MdR CVB's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.
- iii. Workers' Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident.

25. Notice of Non-Performance and Payment Deduction.

- i. If, in the judgment of the Director or his/her designee, the MdR CVB is deemed to be non-compliant with the terms and obligations assumed hereby, the Director or his/her designee, at his/her option, in addition to or in lieu of other remedies provided herein, may withhold the entire installment payment or deduct pro rata for work not performed. A description of the work not performed and the amount to be withheld or deducted from payments to the MdR CVB from the County will be forwarded to the MdR CVB by the Director or his/her designee in a written notice describing the reasons for said action.
- ii. If the Director or his/her designee determines that there are deficiencies in the performance of this Agreement that the Director or his/her designee deems are correctable by the MdR CVB over a certain time span, the Director or his/her designee will provide a written notice to the MdR CVB to correct the deficiency within specified time frames. Should the MdR CVB fail to correct deficiencies within said time frame, the Director or

his/her designee may deduct from the MdR CVB's payment, pro rata, those applicable portions of the Agreement sum.

- iii. The action noted above shall not be construed as a penalty, but as adjustment of payment to the MdR CVB to recover the County cost due to the failure of the MdR CVB to complete or comply with the provisions of this Agreement.
- iv. This sub-paragraph shall not, in any manner, restrict or limit the County's right to damages for any breach of this Agreement provided by law or as specified above and shall not, in any manner, restrict or limit the County's right to terminate this Agreement as agreed to herein.

26. Nondiscrimination and Affirmative Action.

- i. The MdR CVB certifies and agrees that all persons employed by it and its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.
- ii. The MdR CVB shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment; upgrading; demotion; transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- iii. The MdR CVB shall allow the County access to its employment records during regular business hours to verify compliance with these provisions when requested by the County.
- iv. The MdR CVB certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation.
- v. The MdR CVB certifies and agrees that it and its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to

discrimination under this Agreement or under any project, program, or activity supported by this Agreement.

- vi. If the County finds that any provisions of this Paragraph 26 have been violated, such violation shall constitute a material breach of this Agreement upon which the County may terminate or suspend this Agreement. While the County reserves the right to determine independently that the anti-discrimination provisions of this Agreement have been violated, in addition, a determination by the California Fair Employment and Housing Commission or the Federal Equal Employment Opportunity Commission that the MdR CVB has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the MdR CVB has violated the anti-discrimination provisions of this Agreement.
 - vii. The parties agree that in the event the MdR CVB violates any of the anti-discrimination provisions of this Agreement, the County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Agreement.
27. Notice to Employees Regarding the Federal Earned Income Credit. The MdR CVB shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the Federal Income Tax Laws. Such notice shall be provided in accordance with the requirement set forth in Internal Revenue Service Notice 1015.
 28. Notice to Employees Regarding the Safely Surrendered Baby Law. The MdR CVB shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in Attachment C of this Agreement and is also available on the Internet at www.babysafela.org for printing purposes.
 29. Notices. All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as follows:

County:
Los Angeles County Department of
Beaches and Harbors
Attn.: Director
13837 Fiji Way
Marina del Rey, California 90292

MdR CVB:
Marina del Rey Convention & Visitors
Bureau, Inc.
Attn.: Executive Director
4551 Glencoe Avenue, #260
Marina del Rey, California 90292

Addresses may be changed by either party giving ten days' prior written notice thereof to the other party. The Director or his/her designee shall have the authority to issue all notices or demands required or permitted by the County under this Agreement.

30. Proprietary Rights.

- i. Ownership. All materials, data and other information of any kind obtained by the MdR CVB from County personnel shall remain the property of the County. All materials, data, work product, reports, promotional materials and other information of any kind developed by the MdR CVB on behalf of the County pursuant to this Agreement shall be the joint property of the County and the MdR CVB, and, upon reasonable request, the County shall be entitled to copies and/or reproductions of any such items. In each case, the MdR CVB agrees to take all necessary measures to protect the security and confidentiality of all such materials, data, work product, reports, promotional materials and other information. The MdR CVB shall not distribute any such materials, data, work product, reports, promotional materials or other information, in whole or in part, during or after the Agreement term, to anyone without the prior written approval of the Director or his/her designee. The provisions of this Section shall survive the expiration or other termination of this Agreement.
- ii. Maintenance of Files. The MdR CVB shall maintain copies of files and documents relating to its work performed under this Agreement, including supporting and backup data, and shall promptly make the files and documents available for the County's inspection or shall deliver copies to the County upon request of the Director or his/her designee. The County may require that some or all of the MdR CVB's work product be provided in electronic format.

31. Record Retention and Inspection/Audit Settlement.

- i. The MdR CVB shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. The MdR CVB shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. The MdR CVB agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or record relating to this Agreement. All such material, including, but not limited to, all financial records, bank statements, cancelled checks or other proof of payment, timecards, sign-in/sign-out sheets and other time and employment records, and proprietary data and information, shall be kept and maintained by the MdR CVB and shall be made available to the County during the term of this Agreement and for a period of five years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by

the MdR CVB at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the MdR CVB shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

- ii. In the event that an audit of the MdR CVB is conducted specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by the MdR CVB or otherwise, then the MdR CVB shall file a copy of such audit report with the County's Auditor-Controller within 30 days of the MdR CVB's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. Subject to applicable law, the County shall make a reasonable effort to maintain the confidentiality of such report(s).
 - iii. Failure on the part of the MdR CVB to comply with any of the provisions of this Paragraph 31 shall constitute a material breach of this Agreement, upon which the County may terminate or suspend this Agreement.
 - iv. If, at any time during the term of this Agreement or within five years after the expiration or termination of this Agreement, representatives of the County conduct an audit of the MdR CVB regarding the work performed under this Agreement, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the MdR CVB, then the difference shall be either: a) repaid by the MdR CVB to the County by cash payment upon demand; or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the MdR CVB from the County, whether under this Agreement or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the MdR CVB, then the difference shall be paid to the MdR CVB by the County by cash payment, provided that in no event shall the County's maximum obligation for this Agreement exceed the funds appropriated by the County for the purpose of this Agreement.
32. Recycled Bond Paper. Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the MdR CVB agrees to use recycled-content paper to the maximum extent possible on this Agreement.
33. Subcontracting.
- i. The requirements of this Agreement may not be subcontracted by the MdR CVB without the advance written approval of the County. Any attempt by the MdR CVB to subcontract without the prior consent of the County may be deemed a material breach of this Agreement.
 - ii. If the MdR CVB desires to subcontract, the MdR CVB shall provide the following information promptly at the County's request:

- (a) A description of the work to be performed by the subcontractor;
 - (b) A draft copy of the proposed subcontract; and
 - (c) Other pertinent information and/or certifications requested by the County.
- iii. The MdR CVB shall indemnify, defend and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractors were MdR CVB employees.
 - iv. The MdR CVB shall remain fully responsible for all performances required of it under this Agreement, including those that the MdR CVB has determined to subcontract, notwithstanding the County's approval of the MdR CVB's proposed subcontract.
 - v. The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Agreement. The MdR CVB is responsible to notify its subcontractors of this County right.
 - vi. The Director is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the County, the MdR CVB shall forward a fully executed subcontract to the County for its files.
 - vii. The MdR CVB shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.
 - viii. The MdR CVB shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The MdR CVB shall ensure delivery of all such documents to the County.
34. Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program. Failure of the MdR CVB to maintain compliance with the requirements set forth in Paragraph 13 - Contractor's Warranty of Adherence to County's Child Support Compliance Program shall constitute default under this Agreement. Without limiting the rights and remedies available to the County under any other provision of this Agreement, failure of the MdR CVB to cure such default within 90 calendar days of written notice shall be grounds upon which the County may terminate this Agreement pursuant to Paragraph 37 - Termination for Default and pursue debarment of the MdR CVB, pursuant to County Code Chapter 2.202.

35. Termination for Breach of Warranty to maintain Compliance with County's Defaulted Property Tax Reduction Program. Failure of the MdR CVB to maintain compliance with the requirements set forth in Paragraph 14 – Contractor's Warranty of Compliance with County's Defaulted Property Tax Reduction Program shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure of MdR CVB to cure such default within ten days of notice shall be grounds upon which County may terminate this Agreement and/or pursue debarment of MdR CVB, pursuant to County Code Chapter 2.206.

36. Termination for Default.

- i. The County may, by written notice to the MdR CVB, terminate the whole or any part of this Agreement, if, in the judgment of the Director:
 - (a) MdR CVB has materially breached this Agreement; or
 - (b) MdR CVB fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required under this Agreement; or
 - (c) MdR CVB fails to demonstrate a high probability of timely fulfillment of performance requirements under this Agreement, or of any obligations of this Agreement, and, in either case, fails to demonstrate convincing progress toward a cure within five working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.
- ii. In the event that the County terminates this Agreement in whole or in part, the County may procure, upon such terms and in such manner as the County may deem appropriate, goods and services similar to those so terminated. The MdR CVB shall be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and services. The MdR CVB shall continue the performance of this Agreement to the extent not terminated under the provisions of this paragraph.
- iii. Except with respect to defaults of any subcontractors, the MdR CVB shall not be liable for any such excess costs of the type identified in Paragraph 37.ii if its failure to perform this Agreement arises out of causes beyond the control and without the fault or negligence of the MdR CVB. Such causes may include, but are not limited to: acts of God or of the public enemy; acts of the County in either its sovereign or contractual capacity; acts of Federal or State governments in their sovereign capacities; fires; floods; epidemics; quarantine restrictions; strikes; freight embargoes; and unusually severe weather; but, in every case, the failure to perform must be beyond the control and without the fault or negligence of the MdR CVB. If the failure to perform is caused by the default of a subcontractor of the MdR CVB, and if

such default arises out of causes beyond the control of both the MdR CVB and subcontractors of MdR CVB, and without the fault or negligence of either of them, the MdR CVB shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractors of MdR CVB were obtainable from other sources in sufficient time to permit the MdR CVB to meet the required performance schedule.

- iv. If, after the County has given notice of termination under the provisions of this Paragraph 37, it is determined by the County that the MdR CVB was not in default under the provisions of this paragraph, or that the default was excusable under the provisions of sub-paragraph iii above, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 36 - Termination for Convenience.
- v. The rights and remedies of the County provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

37. Termination for Improper Consideration.

- i. The County may, by written notice to the MdR CVB, immediately terminate the right of the MdR CVB to proceed under this Agreement if it is found that consideration, in any form, was offered or given by the MdR CVB, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Agreement or securing favorable treatment with respect to the award, amendment, or extension of this Agreement or the making of any determinations with respect to the MdR CVB's performance pursuant to this Agreement. In the event of such termination, the County shall be entitled to pursue the same remedies against the MdR CVB as it could pursue in the event of default by the MdR CVB.
- ii. The MdR CVB shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (800) 544-6861.
- iii. Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

38. Termination for Insolvency.

- i. The County may terminate this Agreement forthwith in the event of the occurrence of any of the following:

- (a) Insolvency of the MdR CVB. The MdR CVB shall be deemed to be insolvent if it has ceased to pay its debts for at least 60 days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the MdR CVB is insolvent within the meaning of the Federal Bankruptcy Code;
 - (b) The filing of a voluntary or involuntary petition regarding the MdR CVB under the Federal Bankruptcy Code;
 - (c) The appointment of a Receiver or Trustee for the MdR CVB; or
 - (d) The execution by the MdR CVB of a general assignment for the benefit of creditors.
- ii. The rights and remedies of the County provided in this Paragraph 39 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
39. Termination for Non-Adherence of County Lobbyist Ordinance. The MdR CVB, and each County lobbyist or County lobbying firm as defined in County Code Section 2.160.010 retained by the MdR CVB, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the MdR CVB or any County lobbyist or County lobbying firm retained by the MdR CVB to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Agreement, upon which the County may in its sole discretion, immediately terminate or suspend this Agreement.
40. Termination for Non-Appropriation of Funds. Notwithstanding any other provision of this Agreement, the County shall not be obligated for the MdR CVB's performance hereunder or by any provision of this Agreement during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Agreement in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the MdR CVB in writing of any such non-allocation of funds at the earliest possible date.
41. Validity. If any provision of this Agreement or the application thereof to any person or circumstance is held unenforceable, invalid, or illegal, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.
42. Waiver. No waiver by the County of any breach of any provision of this Agreement shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Agreement shall not be construed as a waiver thereof. The

rights and remedies set forth in this Paragraph 43 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

43. Entire Agreement. This Agreement constitutes the entire agreement between the County and the MdR CVB and may be modified only by further written agreement between the parties hereto.
-

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

MARINA DEL REY CONVENTION AND VISITORS BUREAU, INC., a California non-profit corporation

By:

President

SEE ATTACHED
NOTARIAL CERTIFICATE

COUNTY OF LOS ANGELES

By:

MAYOR,

Board of Supervisors

ATTEST:

SACHI A. HAMAI
Executive Officer-
Clerk of the Board of Supervisors



I hereby certify that pursuant to Section 25103 of the Government Code, delivery of this document has been made.

SACHI A. HAMAI
Executive Officer
Clerk of the Board of Supervisors

By:

Deputy

By:

Deputy

APPROVED AS TO FORM:

ANDREA SHERIDAN ORDIN
County Counsel

By:

Principal Deputy County Counsel

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

80

DEC 7 2010

SACHI A. HAMAI
SACHI A. HAMAI
EXECUTIVE OFFICER

77445

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of Los Angeles

On November 17, 2010 before me, Jennifer Jaye Fraser, Notary Public
(Here insert name and title of the officer)

personally appeared Frederick W. Adrianse

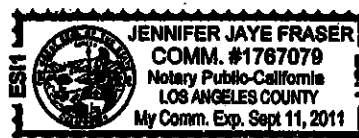
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jennifer Jaye Fraser
Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Agreement NO. By & Between the
County of Los Angeles and
the Marina del Rey Convention
(Title or description of attached document continued)

Number of Pages 28 Document Date 11-17-10
and Visitors Bureau, Inc.
(Additional information)

CAPACITY CLAIMED BY THE SIGNER

☐ Individual (s)

☒ Corporate Officer

President
(Title)

☐ Partner(s)

☐ Attorney-in-Fact

☐ Trustee(s)

☐ Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. he/she/they- is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document